

2009 SEP -4 AM 11: 55 BEFORE THE FEDERAL ELECTION COMMISSION

CELA

Matter of

Kathleen Cannon and  
Robert Rubio

MUR 5849

GENERAL COUNSEL'S REPORT # 5

**I. ACTIONS RECOMMENDED**

Accept the attached signed conciliation agreement with Kathleen Cannon; take no further action with respect to Robert Rubio; and close the file.

**II. BACKGROUND**

Attached is a proposed conciliation agreement that has been signed by counsel for Kathleen Cannon, a former officer at the Bank of America's ("Bank") Student Banking Division, which would settle violations of 2 U.S.C. §§ 441b(a) and 441f in connection with the reimbursement of \$7,700 in political contributions made by Bank employees.<sup>1</sup>

Attachment 1. Cannon has agreed to pay a \$15,000 civil penalty

We

recommend that the

Commission accept the attached signed conciliation agreement with Kathleen Cannon and close the file as to her.

<sup>1</sup> The Commission previously accepted a conciliation agreement with the Bank of America. See Memorandum to the Commission, dated October 31, 2008, and Certification, dated November 12, 2008.

The Commission previously found reason to believe that Robert Rubio, the Student Banking Division's Accounts and Production Support Manager, knowingly and willfully violated 2 U.S.C. § 441f by approving the reimbursement of a \$600 political contribution made by a Bank employee under his immediate supervision. At the time of the Commission's reason to believe finding, there was a basis for investigating whether Rubio knew that the reimbursement of political contributions was illegal when he authorized the reimbursement of this political contribution. Our subsequent investigation failed to establish that Rubio knew this activity was illegal. Instead, the investigation revealed that Cannon solicited the contribution and directed the employee to file for a reimbursement with Bank funds. Thus, we are recommending that the Commission take no further action with respect to Robert Rubio and close the file as to him.

**III. DISCUSSION**

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Therefore, we recommend that the

Commission accept the conciliation agreement with Kathleen Cannon and close the file

as to her.

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**B. Take No Further Action as to Robert Rubio**

As discussed *supra* at 2, the Commission found reason to believe that Robert Rubio knowingly and willfully violated 2 U.S.C. § 441f by approving the reimbursement of a \$600 contribution made by his subordinate in the Student Banking Division, Senior Business Analyst Dale Robertson. At the time of the reason to believe finding, it appeared that Rubio may have approved Robertson's reimbursement knowing the activity was illegal because he stopped requesting reimbursement for his own political contributions prior to approving Robertson's request for reimbursement.

However, in both his response to the reason to believe findings and in an informal interview, Rubio asserted that he did not know that the reimbursement of political contributions with Bank funds violated the Act at the time he signed off on Robertson's on-line request for reimbursement. None of the evidence gathered during the course of our investigation contradicted Rubio's assertions that he did not know reimbursing political contributions with Bank funds was illegal.

Further, the evidence gathered during our investigation demonstrated that Cannon told Robertson that she wanted him to participate in the fundraising event for the McKeon for Congress committee and specifically instructed him to contribute \$600 to the committee. She also informed Robertson that he would be reimbursed for the contribution and directed him to categorize the expense as "customer entertainment." See General Counsel's Brief, dated October 17, 2008. Cannon has never denied these facts

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1 and does not contest that she is responsible for the events leading up to the  
2 reimbursement of Robertson's political contribution with Bank funds. General Counsel's  
3 Report #4; Attachment 1, ¶ IV, 12. Accordingly, we recommend the Commission take  
4 no further action with respect to Robert Rubio and close the file.

5 **IV. RECOMMENDATIONS**

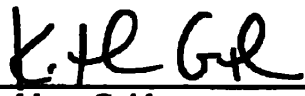
- 6 1. Accept the Conciliation Agreement with Kathleen Cannon.  
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8 2. Take no further action with respect to Robert Rubio.  
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10 3. Approve the attached Factual and Legal Analysis for Robert Rubio.  
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12 4. Close the file.  
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14 5. Approve the appropriate letters.

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9-4-09

By:

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